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SENATE BILL 218

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Phil A. Griego

FOR THE ECONOMIC AND RURAL
DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTIONS OF THE RURAL
TELECOMMUNICATIONS ACT OF NEW MEXICO TO PROVIDE FOR THE STATE
RURAL UNIVERSAL SERVICE FUND; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 63-9H-6 NMSA 1978 (being Laws 1999,
Chapter 295, Section 6) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT [~~BOARD~~]. --

A. No later than January 1, 2000, the commission
shall implement a "state rural universal service fund" to
maintain and support at affordable rates those public
telecommunications services as are determined by the
commission. All of the balances in the existing New Mexico
universal service fund as of July 1, 1999 shall be transferred

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1 into the state rural universal service fund.

2 B. The fund shall be financed by a surcharge on
3 [all] intrastate retail public telecommunications services
4 [revenue] to be determined by the commission, excluding
5 [revenue from] services provided pursuant to a low-income
6 telephone assistance plan billed to end-user customers by a
7 telecommunications carrier, and excluding [from revenue] all
8 amounts from surcharges, gross receipts taxes, excise taxes,
9 franchise fees and similar charges. For the purpose of funding
10 the fund, the commission has the authority to apply the
11 surcharge on [all] intrastate retail public telecommunications
12 services provided by telecommunications carriers and to
13 comparable retail alternative services provided by
14 telecommunications carriers [and non-telecommunications
15 carriers], including commercial mobile radio services,
16 [operator services and aggregator services, offered by
17 providers other than telecommunications carriers] at a
18 competitively and technologically neutral rate or rates to be
19 determined by the commission. In prescribing competitively and
20 technologically neutral surcharge rates, the commission may
21 make distinctions between services subject to a surcharge, but
22 it shall require [telecommunications] all carriers [and non-
23 telecommunications carriers] subject to the surcharge to apply
24 uniform surcharge rates for the same or comparable services.
25 Money deposited in the fund is not public money, and the

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1 administration of the fund is not subject to the provisions of
2 law regulating public funds. The commission shall not apply
3 surcharges to a private telecommunications network.

4 C. The fund shall be competitively and
5 technologically neutral, equitable and nondiscriminatory in its
6 collection and distribution of funds, portable between eligible
7 telecommunications carriers [~~targeted to high-cost rural areas~~]
8 and additionally shall provide a specific, predictable and
9 sufficient support mechanism as determined by the commission
10 that reduces [~~implicit subsidies, including~~] intrastate
11 switched access charges to interstate switched access charge
12 levels in a revenue-neutral manner and ensures universal
13 service in the state.

14 D. The commission shall:

15 (1) establish eligibility criteria for
16 participation in the fund consistent with federal law that
17 ensure the availability of service at affordable rates [~~without~~
18 ~~unreasonably increasing rates for basic service while still~~
19 ~~granting eligible telecommunications carriers a reasonable~~
20 ~~profit on supported services in geographic areas requiring~~
21 ~~support from the fund, but the eligibility criteria shall not~~
22 ~~require any investigations of the costs or rates of a~~
23 ~~telecommunications carrier receiving support from the fund~~
24 ~~other than that provided for in Subsection E of this section].~~
25 The eligibility criteria shall not restrict or limit an

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1 eligible telecommunications carrier from receiving federal
2 universal service support;

3 (2) provide for the collection of the
4 surcharge on a competitively neutral basis and for the
5 administration and disbursement of money from the fund;

6 (3) determine those ~~[geographic areas and~~
7 ~~local exchange]~~ services requiring support from the fund; ~~[and]~~

8 (4) provide for the separate administration
9 and disbursement of federal universal service funds consistent
10 with federal law; and

11 (5) establish affordability benchmark rates
12 for local residential and business services that shall be
13 utilized in determining the level of support from the fund.
14 The initial benchmark for residence service shall be the
15 weighted statewide average basic exchange rate after large
16 telecommunications carriers have adjusted such rates for
17 offsets for intrastate switched access charge reductions. For
18 purposes of this subsection, large telecommunications carriers
19 are telecommunications carriers serving more than three hundred
20 seventy-five thousand access lines in New Mexico. The process
21 for determining subsequent adjustments to the benchmark shall
22 be established through a rulemaking.

23 E. All incumbent telecommunications carriers and
24 competitive carriers already designated as eligible
25 telecommunications carriers for the fund shall be eligible for

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1 participation in the fund. All other carriers that choose to
2 become eligible to receive support from the fund may petition
3 the commission to be designated as an eligible
4 telecommunications carrier for the fund. The commission may
5 grant eligible carrier status to a competitive carrier in a
6 rural area upon a finding that granting the application is in
7 the public interest. In making a public interest finding, the
8 commission shall consider at least the following items:

9 (1) whether granting eligible carrier status
10 to multiple carriers in a designated area is likely to result
11 in more customer choice;

12 (2) the impact of designation of an additional
13 eligible carrier on the size of the fund;

14 (3) the unique advantages and disadvantages of
15 the competitor's service offering;

16 (4) any commitments made regarding the quality
17 of telephone service; and

18 (5) the competitive carrier's willingness and
19 ability to offer service throughout the designated service
20 areas within a reasonable time frame.

21 ~~[E.]~~ F. The commission shall adopt rules, including
22 a provision for variances, for the implementation and
23 administration of the fund in accordance with the provisions of
24 this section no later than November 1, 2005. ~~[The cost basis~~
25 ~~for establishing the fund and determining the rate of~~

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1 ~~distribution of the fund for areas served by an incumbent rural~~
2 ~~telecommunications carrier shall be the same cost of and shall~~
3 ~~be consistent with the federal support mechanisms for providing~~
4 ~~the supported service by geographic area, determined by the~~
5 ~~federal telecommunications commission. The cost basis established~~
6 ~~by the commission for areas served by incumbent rural~~
7 ~~telecommunications carriers shall include the same return~~
8 ~~authorized by the federal telecommunications commission for use in~~
9 ~~rates filed by the national exchange carriers association, or~~
10 ~~its successor, at the federal telecommunications commission for~~
11 ~~member carriers. The revenue basis for rural~~
12 ~~telecommunications carriers with fewer than fifty thousand~~
13 ~~access lines shall include only revenues from public~~
14 ~~telecommunications services provided by the eligible~~
15 ~~telecommunications carrier.~~

16 F.] G. The commission shall, upon implementation of
17 the fund, select a neutral third party administrator to
18 collect, administer and disburse money from the fund under the
19 supervision and control of the commission pursuant to
20 established criteria and rules promulgated by the commission.
21 The administrator may be reasonably compensated for the
22 specified services from the surcharge proceeds to be received
23 by the fund pursuant to Subsection B of this section. [The
24 administrator shall consult with an advisory board established
25 by the commission composed of representatives from all

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1 ~~participating providers and the attorney general or one other~~
2 ~~customer representative, provided that the total number of~~
3 ~~individual representatives on the advisory board shall not~~
4 ~~exceed thirteen.]~~ For purposes of this subsection, the
5 commission shall not be a neutral third party administrator.

6 [G.] H. The fund established by the commission
7 shall ensure the availability of local [exchange]
8 telecommunications service as determined by the commission at
9 affordable rates in rural high cost areas of the state.

10 I. Beginning April 1, 2006, the commission shall
11 commence the phase-in of reductions in intrastate switched
12 access charges. By May 1, 2008, the commission shall ensure
13 that intrastate switched access charges are equal to interstate
14 switched access charges established by the federal
15 communications commission as of January 1, 2006. Nothing in
16 this section shall preclude the commission from considering
17 further adjustments to intrastate switched access charges based
18 on changes to interstate switched access charges after May 1,
19 2008.

20 [H.] J. To ensure that providers of intrastate
21 [~~long distance~~] retail telecommunications service contribute to the
22 fund and to further ensure that the surcharge to be paid by the
23 end-user customer will be held to a minimum, no later than
24 [~~December 31, 1999~~] November 1, 2005, the commission shall
25 adopt rules, or take other appropriate action, to require all

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1 such providers to participate in a plan to ensure accurate
2 reporting. [~~of intrastate retail long distance revenues~~

3 ~~I. Upon commission action to replace implicit~~
4 ~~subsidies with explicit subsidies, the commission shall reduce~~
5 ~~in a revenue-neutral basis rates for intrastate~~
6 ~~telecommunications services, other than basic local exchange~~
7 ~~service, excluding rates affected by the low-income telephone~~
8 ~~assistance program, in an amount equal to payments received by~~
9 ~~a rural telecommunications carrier from the fund.]~~

10 K. The commission shall authorize payments from the
11 fund to incumbent local exchange carriers in combination with
12 revenue-neutral rate rebalancing up to the affordability
13 benchmark rates, in an amount equal to the reduction in
14 revenues that occurs as a result of reduced intrastate switched
15 access charges. The commission shall determine the methodology
16 to be used to authorize payments to all other carriers that
17 apply for and receive eligible carrier status. Any reductions
18 in charges for access services resulting from compliance with
19 this section shall be passed on for the benefit of consumers in
20 New Mexico.

21 L. In a rate proceeding filed pursuant to
22 Subsection F of Section 63-9H-7 NMSA 1978, the commission may
23 also authorize payments from the fund to incumbent rural
24 telecommunications carriers serving in high-cost areas of the
25 state that have reduced access charges upon a finding by the

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1 commission that such payments are needed to ensure the
2 widespread availability and affordability of residential local
3 exchange service.

4 M By December 1, 2008, the fund administrator
5 shall make a report to the commission and the legislature. The
6 report shall include the effects of access reductions. The
7 report shall also make recommendations for any changes to the
8 structure, size or purposes of the fund. "

9 Section 2. Section 63-9H-7 NMSA 1978 (being Laws 1999,
10 Chapter 295, Section 7) is amended to read:

11 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL
12 TELECOMMUNICATIONS CARRIER. --

13 A. Rates for retail rural public telecommunications
14 services provided by an incumbent rural telecommunications
15 carrier shall be subject to regulation by the commission only
16 in the manner and to the extent authorized by this section.

17 B. An incumbent rural telecommunications carrier
18 shall file tariffs for all retail public telecommunications
19 services, other than residential local exchange service, which
20 shall be effective after ten days' notice to the commission and
21 publication in a local newspaper in the incumbent service area.
22 An incumbent rural telecommunications carrier shall remain
23 subject to complaint by an interested party subject to Section
24 [~~10 of the Rural Telecommunications Act of New Mexico~~] 63-9H-10
25 NMSA 1978.

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1 C. Rates for residential local exchange service may
2 be increased by an incumbent rural telecommunications carrier
3 only after sixty days' notice to all affected subscribers. The
4 notice of increase shall include:

- 5 (1) the reasons for the rate increase;
6 (2) a description of the affected service;
7 (3) an explanation of the right of the
8 subscriber to petition the commission for a public hearing on
9 the rate increase;
10 (4) a list of local exchange areas that are
11 affected by the proposed rate increase; and
12 (5) the dates, times and places for the public
13 informational meetings required by this section.

14 D. An incumbent rural telecommunications carrier
15 may increase its rates for residential local exchange service
16 in the manner otherwise provided in this section as necessary
17 to recover a reasonable allocation of costs incurred due to
18 requirements imposed by any federal or state law or rule. An
19 incumbent rural telecommunications carrier that proposes to
20 increase its rates for residential local exchange service shall
21 hold at least one public informational meeting in each public
22 regulation commissioner's district as established by the Public
23 Regulation Commission Apportionment Act in which there is a
24 local exchange area affected by the rate change.

25 E. Residential local exchange service rates

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1 increased by [a] an incumbent rural telecommunications carrier
2 pursuant to Subsection D of this section shall be reviewed by
3 the commission only upon written protest signed by two and one-
4 half percent of all affected subscribers or upon the commission
5 staff's own motion for good cause. The protest shall
6 specifically set forth the particular rate or charge as to
7 which review is requested, the reasons for the requested review
8 and the relief that the persons protesting desire. If a proper
9 protest is presented to the commission within sixty days from
10 the date notice of the rate change was sent to affected
11 subscribers of an incumbent rural telecommunications carrier,
12 the commission may accept and file the complaint and, upon
13 proper notice, may suspend the rates at issue during the
14 pendency of the proceedings and reinstate the rates previously
15 in effect and shall hold and complete a hearing thereon within
16 ninety days after filing to determine if the rates as proposed
17 are fair, just and reasonable. The commission may, within
18 sixty days after close of the hearing, enter an order adjusting
19 the rates at issue, except that the commission shall not set
20 any rate below the intrastate cost of providing the service,
21 ~~[that will include cost and rate of return in accordance with~~
22 ~~Subsection E of Section 6 of the Rural Telecommunications Act~~
23 ~~of New Mexico]~~ which shall include the cost methodology and
24 rate of return authorized by the federal communications
25 commission. In the order, the commission may order a refund of

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1 amounts collected in excess of the rates and charges as
2 approved at the hearing, which may be paid as a credit against
3 billings for future services. If the complaint is denied, the
4 commission shall enter an order denying the complaint within
5 sixty days after the close of the hearing, and the rates shall
6 be deemed approved. For purposes of this section, cost shall
7 also include a reasonable amount of joint and common costs
8 incurred by the telecommunications carrier in its operations
9 and may include other accounting adjustments authorized by the
10 commission.

11 F. [A] An incumbent rural telecommunications
12 carrier that serves less than five percent of the state's
13 aggregate statewide subscriber lines may at any time elect to
14 file an application with the commission requesting the
15 commission to prescribe fair, just and reasonable rates for the
16 carrier based on the carrier's revenue, expenses and investment
17 in accordance with traditional rate-making principles.

18 G. Rates for local exchange, vertical and long
19 distance service to retail end-user customers may be reduced to
20 a level equal to, but not below, the intrastate cost, which
21 shall include ~~[cost and rate of return pursuant to Subsection E~~
22 ~~of Section 6 of the Rural Telecommunications Act of New Mexico]~~
23 the cost methodology and rate of return authorized by the
24 federal communications commission. If an incumbent rural
25 telecommunications carrier loses its exemption pursuant to

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1 Section 251 of the federal act, the rate for a service,
2 excluding basic service, ~~must~~ cover the cost of the service,
3 including the imputed rate of wholesale service elements as may
4 be required by the ~~commi~~ssion. The cost of long distance
5 service ~~must~~ also include any interexchange access rates
6 charged to another tele~~commu~~nications carrier for the service.

7 H. An incumbent rural tele~~commu~~nications carrier
8 operating pursuant to this section shall have the ability to
9 offer or discontinue offering special incentives, discounts,
10 packaged offerings, temporary rate waivers or other promotions,
11 or to offer individual contracts. "

12 Section 3. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect immediately.